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10/574,252

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David John Chapman-Jones

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EXAMINER

PATEL, SHEFALI DILIP

ART UNIT

PAPER NUMBER

3767

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/574,252	<b>Applicant(s)</b> CHAPMAN-JONES, DAVID JOHN	
	<b>Examiner</b> SHEFALI D. PATEL	<b>Art Unit</b> 3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 26 and 29-39 is/are pending in the application.
- 4a) Of the above claim(s) 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26, 29-33 and 35-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Acknowledgments***

1. In the reply, filed on September 22, 2008, Applicant amended claims 26, 29, 34-36, 38, and 39. However, claim 34 still stands withdrawn from consideration.
2. Applicant cancelled claims 1-25, 27, 28, 40, 42, and 43.
3. Currently, claims 26, 29-33, and 35-39 are under examination.

### ***Response to Arguments***

4. Applicant's arguments filed September 22, 2008, have been fully considered but they are not persuasive.
5. With respect to the 35 USC 102(b) rejection of claims 26, 29, 35, and 36 under Millot et al (US 6,411,853), Applicant argues that Millot et al does not teach each and every limitation of independent claim 29. Examiner disagrees. Millot et al teaches a device (Figures 1-7) for treating tissue, comprising: a dressing (flexible support [1]) for applying to a treatment area; a pair of electrodes (electrodes [2][3]) affixed to a treatment surface of the dressing; and a control unit (electric supply means [9]) adapted to pass alternating current to the treatment area via the electrodes and is further adapted to vary constantly the amplitude and/or the frequency of the alternating current (column 2, lines 48-54)(column 2, lines 58-65)(column 5, lines 19-37).
6. With respect to the 35 USC 102(b) rejection of claims 29, 30, 32, 33, and 35 under Claude (US 4,982,742), Applicant argues that Claude does not teach each and every limitation of independent claim 29. Examiner disagrees. Claude teaches a device (Figures 1-5) for treating

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tissue, comprising: a dressing (bandage base [14]) for applying to a treatment area; a pair of electrodes (electrode means [32][42]) affixed to a treatment surface of the dressing; and a control unit (circuit strip [26] containing circuitry [28]) adapted to pass alternating current to the treatment area via the electrodes and is further adapted to vary constantly the amplitude and/or the frequency of the alternating current (column 2, lines 26-29)(column 2, lines 42-46)(column 3, lines 46-57)(column 4, lines 22-45).

7. With respect to Millot et al, Applicant specifically argues that Millot et al does not teach a control unit that is **adapted to** pass alternating current to the treatment area via the electrodes and is further **adapted to** vary constantly the amplitude and/or the frequency of the alternating current. With respect to Claude, Applicant specifically argues that Claude does not teach that the control unit is further **adapted to** vary constantly the amplitude and/or the frequency of the alternating current. It has been held that the recitation that an element is “adapted to” perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. Strictly as control units, the control units of Millot et al and Claude have the ability to deliver alternating current and vary constantly the amplitude and/or frequency of the alternating current.

### *Claim Objections*

8. Claim 36 is objected to because of the following informalities:

In regards to claim 36, the limitation "wherein the electronic circuitry **comprising** memory" should be corrected as " wherein the electronic circuitry **comprises** memory".

Appropriate correction is required.

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***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claim 38 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Claim 38 recites the limitations "the i/o port" and "the memory". There is insufficient antecedent basis for this limitation in the claim, as these terms have not been previously introduced in claim 38 or in prior claim 35. *Previously, in the claims submitted 06/12/2008, there was antecedent basis for the terms since claim 38 originally depended upon claim 37.*

***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 26, 29, 35, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Millot et al (US 6,411,853).

In regards to claims 26, 29, 35, and 36, Millot et al et al teaches a device for treating tissue (Figures 1-7) comprising:

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- a. a dressing for applying to a treatment area (flexible support [1]) (column 2, line 34)
- b. a pair of electrodes affixed to a treatment surface of the dressing (electrodes [2][3])(column 4, lines 41-43)
- c. a control unit (electric supply means [9]) adapted to pass alternating current to the treatment area via the electrodes and is further adapted to vary constantly the amplitude and/or the frequency of the alternating current (column 2, lines 48-54)(column 2, lines 58-65)(column 5, lines 19-37)

14. Claims 26, 29, 30, 32, 33, 35, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Claude (US 4,982,742).

In regards to claims 26, 29, and 35, Claude teaches a device (Figures 1-5, apparatus [10]) comprising:

- a. a dressing for applying to a treatment area (bandage base [14])
- b. a pair of electrodes affixed to a treatment surface of the dressing (electrode means [32][42])
- c. a control unit (circuit strip [26] containing circuitry [28]) adapted to pass alternating current to the treatment area via the electrodes and is further adapted to vary constantly the amplitude and/or the frequency of the alternating current (column 2, lines 26-29)(column 2, lines 42-46)(column 3, lines 46-57)(column 4, lines 22-45)

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In regards to claim 30, Claude teaches that the alternating current is varied between 50 and 500 microamps (Abstract)(column 5, lines 3-6).

In regards to claim 32, Claude does not state that the time period between each variation of amplitude and/or frequency is 0.1s; however, since Claude teaches that the minimum frequency of the current applied is 10 hertz (Abstract)(column 5, lines 3-7), through a simple formula (time period = 1/frequency), it can be calculated that the time period is 0.1s.

In regards to claim 33, Claude teaches that the alternating current has a ramp waveform (Figure 5)(column 4, lines 53-58).

In regards to claim 39, Claude teaches that a removable tab (pull away tab [52]) is electro-mechanically connected between a power source [50] and a ground point on the control unit [28]. When the tab [52] is intact, the power source [50] is connected to ground point and energization of the control unit [28] does not occur. Once the tab is removed, the electrical connection between the power source [50] to ground point is broken, and as result, the power source [50] drives the control unit [28] to generate current (column 3, lines 37-45).

### ***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Claude, as applied to claim 29 above.

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In regards to claim 31, Claude teaches that the frequency of the alternating current is varied between 10 and 50 hertz (Abstract)(column 5, lines 3-7); however, claim 31 requires the current to be varied between 10 and 900 hertz. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to vary the current up to the maximum frequency of 900 hertz, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

17. Claims 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Millot et al, as applied to claim 35 and 36 above, and further in view of Jacobsen (US 5,860,957).

In regards to claims 37 and 38, Millot et al does not teach that the control unit comprises an i/o port and a wireless transceiver in order to wirelessly connect an external device to the control unit. Jacobsen teaches a system (Figures 1-2) comprising a control unit (control pad [10]) and a dressing (drug delivery patch [20]), wherein a wireless transceiver (external host interface/wireless link [48]) allows an external device (computer, *not referenced*) to wireless connect to the control unit memory [52] for the transfer of data to and from the external device (column 7, lines 28-41). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the dressing device of Millot et al with the wireless transceiver interface of Jacobsen, as such will allow the external device (computer) to wirelessly update the program and modify the treatment regimen of the dressing device based on monitored patient parameters (column 7, lines 28-41).

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18. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Millot et al, as applied to claim 35 above, and further in view of Claude.

In regards to claim 39, Millot et al does not teach a removable tab within the control unit that controls whether current is passed through the device. Claude teaches a device (Figure 3, apparatus [10]) wherein a removable tab (pull away tab [52]) is electro-mechanically connected between a power source [50] and a ground point on the control unit [28]. When the tab [52] is intact, the power source [50] is connected to ground point and energization of the control unit [28] does not occur. Once the tab is removed, the electrical connection between the power source [50] to ground point is broken, and as result, the power source [50] drives the control unit [28] to generate current (column 3, lines 37-45). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to incorporate a removable tab, as taught by Claude, into the control unit, of the modified device of Millot et al and Jacobsen, as the tab will allow for the control of current dissipation by the control unit through the device, and will prevent the accidental dissipation of current from the device before the device is ready to be used (column 3, lines 37-45).

### ***Conclusion***

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Mavor et al (US 2004/0267189), Miller et al (US 2002/0161323), Avrahami et al (US 6,611,706), and Tapper (US 6,600,950).

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHEFALI D. PATEL whose telephone number is (571) 270-3645. The examiner can normally be reached on Monday through Thursday from 8am-5pm Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin C. Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shefali D Patel/  
Examiner, Art Unit 3767  
12/17/2008

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761